

UNDERGROUND STORAGE TANK AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kay L. McIff

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill increases the coverage limits for participants in the Petroleum Storage Tank Trust Fund.

Highlighted Provisions:

This bill:

- increases the coverage limits for participants in the Petroleum Storage Tank Trust Fund;
- expands the uses for which trust fund monies can be used; and
- makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

19-6-409, as last amended by Laws of Utah 2002, Chapter 256

19-6-419, as last amended by Laws of Utah 1997, Chapter 172

19-6-423, as last amended by Laws of Utah 1997, Chapter 172

Be it enacted by the Legislature of the state of Utah:



Section 1. Section **19-6-409** is amended to read:

19-6-409. Petroleum Storage Tank Trust Fund created -- Source of revenues.

(1) (a) There is created a private-purpose trust fund entitled the "Petroleum Storage Tank Trust Fund."

(b) The sole sources of revenues for the fund are:

(i) petroleum storage tank fees paid under Section 19-6-411;

(ii) underground storage tank installation company permit fees paid under Section 19-6-411;

(iii) the environmental assurance fee and ~~[any]~~ penalties~~;~~ paid under Section 19-6-410.5; and

(iv) ~~[any]~~ interest accrued on ~~[these]~~ revenues listed in this Subsection (1)(b).

(c) Interest earned on fund monies shall be deposited into the fund.

~~[(2) Fund monies may be used to pay:]~~

(2) The executive secretary may expend monies from the fund to pay costs:

(a) ~~[costs as provided in]~~ covered by the fund under Section 19-6-419; ~~[and]~~

~~[(b) for the administration of the fund and the]~~

(b) of administering the:

(i) fund; and

(ii) environmental assurance program and fee under Section 19-6-410.5~~[-];~~

(c) incurred by the state for a legal service or claim adjusting service provided in connection with a claim, judgement, award, or settlement for bodily injury or property damage to third parties;

(d) incurred by the state risk manager in determining the actuarial soundness of the fund;

(e) incurred by a third party claiming injury or damages from a release reported on or after May 12, 2009, for hiring a certified underground storage tank consultant;

(i) to review an investigation or corrective action by a responsible party; and

(ii) in accordance with Subsection (4); and

(f) allowed under this part that are not listed under this Subsection (2).

(3) Costs for the administration of the fund and the environmental assurance fee shall be appropriated by the Legislature.

59 ~~[(4) The executive secretary may expend monies from the fund for:]~~
60 ~~[(a) legal and claims adjusting costs incurred by the state in connection with claims;~~
61 ~~judgments, awards, or settlements for bodily injury or property damage to third parties;]~~
62 ~~[(b) costs incurred by the state risk manager in determining the actuarial soundness of~~
63 ~~the fund; and]~~
64 ~~[(c) other costs as provided in this part.]~~
65 (4) The executive secretary shall:
66 (a) in paying costs under Subsection (2)(e):
67 (i) determine a reasonable limit on costs paid based on the:
68 (A) extent of the release;
69 (B) impact of the release; and
70 (C) services provided by the certified underground storage tank consultant;
71 (ii) pay, per release, costs for only one certified underground storage tank consultant
72 agreed to by all third parties claiming damages or injury:
73 (iii) include costs paid in the coverage limits allowed under Section 19-6-419; and
74 (iv) not pay legal costs of third parties;
75 (b) review and give careful consideration to reports and recommendations provided by
76 a certified underground storage tank consultant hired by a third party; and
77 (c) make reports and recommendations provided under Subsection (4)(b) available on
78 the Division of Environmental Response and Remediation's web site.

79 Section 2. Section **19-6-419** is amended to read:

80 **19-6-419. Costs covered by the fund -- Costs paid by owner or operator --**

81 **Payments to third parties -- Apportionment of costs.**

82 (1) If all requirements of this part have been met and a release occurs from a tank that
83 is covered by the fund, the costs per release shall be covered as provided under this section.

84 (2) ~~[The]~~ For releases reported before May 12, 2009, the responsible party shall pay:

85 (a) the first \$10,000 of costs; and

86 (b) (i) all costs over \$1,000,000 , if the release was from a tank:

87 (A) located at a facility engaged in petroleum production, refining, or marketing; or

88 (B) with an average monthly facility throughput of more than 10,000 gallons; and

89 (ii) all costs over \$500,000 , if the release was from a tank:

(A) not located at a facility engaged in petroleum production, refining, or marketing;
and

(B) with an average monthly facility throughput of 10,000 gallons or less.

(3) ~~[Hf] For releases reported before May 12, 2009, if~~ money is available in the fund and the responsible party has paid costs of \$10,000, the executive secretary shall pay costs from the fund in an amount not to exceed:

(a) \$990,000 if the release was from a tank:

(i) located at a facility engaged in petroleum production, refining, or marketing; or

(ii) with an average monthly facility throughput of more than 10,000 gallons; and

(b) \$490,000 if the release was from a tank:

(i) not located at a facility engaged in petroleum production, refining, or marketing;

and

(ii) with an average monthly facility throughput of 10,000 gallons or less.

~~[(4) The total costs of tank releases regarding any responsible party that may be paid in any fiscal year by fund monies are:]~~

(4) The executive secretary may pay fund monies to a responsible party up to the following amounts in a fiscal year:

(a) \$990,000 ~~[for]~~ to a responsible party ~~[of one to 99]~~ owning or operating less than 100 petroleum storage tanks; or

(b) \$1,990,000 ~~[for]~~ to a responsible party ~~[of]~~ owning or operating 100 or more petroleum storage tanks.

(5) For a release reported on or after May 12, 2009, the responsible party shall pay:

(a) the first \$10,000 of costs; and

(b) (i) all costs over \$2,000,000, if the release was from a tank:

(A) located at a facility engaged in petroleum production, refining, or marketing; or

(B) with an average monthly facility throughput of more than 10,000 gallons; and

(ii) all costs over \$1,000,000, if the release was from a tank:

(A) not located at a facility engaged in petroleum production, refining, or marketing;

and

(B) with an average monthly facility throughput of 10,000 gallons or less.

(6) For a release reported on or after May 12, 2009, if money is available in the fund

and the responsible party has paid costs of \$10,000, the executive secretary shall pay costs from the fund in an amount not to exceed:

(a) \$1,990,000 if the release was from a tank:

(i) located at a facility engaged in petroleum production, refining, or marketing; or

(ii) with an average monthly facility throughput of more than 10,000 gallons; and

(b) \$990,000 if the release was from a tank:

(i) not located at a facility engaged in petroleum production, refining, or marketing;

and

(ii) with an average monthly facility throughput of 10,000 gallons or less.

(7) The executive secretary may pay fund monies to a responsible party up to the following amounts in a fiscal year:

(a) \$1,990,000 to a responsible party owning or operating less than 100 petroleum storage tanks; or

(b) \$3,990,000 to a responsible party owning or operating 100 or more petroleum storage tanks.

~~[(5)]~~ (8) (a) In authorizing payments for costs from the fund, the executive secretary shall apportion monies:

(i) first, to the following type of expenses incurred by the state:

(A) legal[;];

(B) adjusting[;]; and

(C) actuarial ~~[expenses incurred by the state; expenses incurred in];~~

(ii) second, to expenses incurred for:

(A) investigation[;];

(B) abatement action[;]; and

(C) corrective action; and ~~[then]~~

(iii) third, to payment of:

(A) judgments[;];

(B) awards[, or]; and

(C) settlements to third parties for bodily injury or property damage.

(b) The board shall make rules governing the apportionment of costs among third party claimants.

Section 3. Section **19-6-423** is amended to read:

19-6-423. Claim or suit against responsible parties -- Prerequisites for payment from fund to responsible parties or third parties -- Limitations of liability for third party claims.

(1) (a) ~~[In order to be eligible for]~~ The executive secretary may authorize payments from the fund~~[if]~~ to a responsible party if the responsible party receives actual or constructive notice ~~[of an occurrence];~~

(i) of a release likely to give rise to a claim~~[; that a]; or~~

(ii) that in connection with a release a:

(A) suit has been filed~~[;]; or [a]~~

(B) claim has been made against ~~[him]~~ the responsible party for:

(I) bodily injury; or

(II) property damage ~~[connected with a release of petroleum from a petroleum storage tank, the].~~

(b) A responsible party described in Subsection (1)(a) shall:

~~[(a)]~~ (i) inform the state risk manager immediately of ~~[the occurrence]~~ a release, suit, or claim described in Subsection (1)(a);

~~[(b)]~~ (ii) allow the state risk manager and ~~[his]~~ the state risk manager's legal counsel to participate with the responsible party and ~~[his]~~ the responsible party's legal counsel in:

~~[(i)]~~ (A) the defense of ~~[any]~~ a suit;

~~[(ii)]~~ (B) determination of legal strategy ~~[and any];~~

(C) other decisions affecting the defense of ~~[any]~~ a suit; and

~~[(iii)]~~ ~~any~~ (D) settlement negotiations; and

~~[(e)]~~ (iii) conduct the defense of ~~[any]~~ a suit or claim in good faith.

(2) The executive secretary may ~~[not]~~ authorize payment of fund monies for ~~[any]~~ a judgment or award to third parties ~~[unless]~~ if the state risk manager:

(a) ~~[indicates that he was not prevented from participating]~~ was allowed to participate in the defense of the suit as required under Subsection (1)(b); and

(b) approves the settlement.

(3) ~~[In making payments to third parties from the fund]~~ The executive secretary may make a payment from the fund to a third party pursuant to Section 19-6-421~~[; or [in funding a]~~

183 fund a corrective action plan pursuant to Section 19-6-420[, the executive secretary may not
184 pay an award or judgment or fund a corrective action plan to the extent that it imposes any
185 liability or makes any] if the payment or funding does not impose a liability or make a payment
186 for:

187 (a) [~~obligations~~] an obligation of a responsible party [~~under a~~] for:

188 (i) workers' compensation[;] benefits;

189 (ii) disability benefits[, or];

190 (iii) unemployment compensation [~~law or other~~]; or

191 (iv) other benefits under a similar law;

192 (b) a bodily injury [~~to an~~] award to:

193 (i) a responsible party's employee [~~of the responsible party~~] arising from and in the
194 course of [~~his~~] the employee's employment; or [~~to~~]

195 (ii) the spouse, child, parent, brother, sister, heirs, or personal representatives of [~~that~~]
196 the employee [~~as a result of that bodily injury~~] described in Subsection (3)(b)(i);

197 (c) bodily injury or property damage arising from the ownership, maintenance, use, or
198 entrustment to others of [~~any~~] an aircraft, motor vehicle, or watercraft;

199 (d) property damage to [~~any~~] a property owned by, occupied by, rented to, loaned to,
200 bailed to, or otherwise in the care, custody, or control of [~~the owner or operator~~] a responsible
201 party except to the extent necessary to complete a corrective action plan;

202 (e) bodily injury or property damage for which [~~the~~] a responsible party is obligated to
203 pay damages [~~only~~] by reason of the assumption of liability in a contract or agreement[, ~~other~~
204 ~~than a~~] unless the responsible party entered into the contract or agreement [~~entered into~~] to
205 meet the financial responsibility requirements of:

206 (i) Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C.[, ~~Section~~] Sec.
207 6991c[;] et seq.[, ~~or~~];

208 (ii) this part[;]; or

209 (iii) regulations or rules made under [~~either of them~~] Subsections (3)(e)(i) and (ii);

210 (f) bodily injury or property damage for which [~~the~~] a responsible party is liable to a
211 third party solely on account of personal injury to the third party's spouse [~~of that third party~~];

212 (g) bodily injury [~~or~~], property damage, or the cost of corrective action caused by [~~a~~
213 ~~release from a petroleum storage tank~~] releases reported before May 12, 2009 that are covered

by the fund [~~or the cost of a corrective action plan, where~~] if the total amount previously paid
by the executive secretary to compensate third parties [~~or for funding a~~] and fund corrective
action [~~plan in respect to that same accidental release from the covered tank equals \$990,000;~~
~~or~~] plans for the releases equals:

~~[(h) bodily injury or property damage caused by a release from a petroleum storage~~
~~tank covered by the fund or the cost of a corrective action plan when the total amount~~
~~previously paid by the executive secretary to compensate third parties or for funding corrective~~
~~action plans in respect to releases from tanks of any one responsible party during any fiscal~~
~~year equals \$990,000 for a responsible party regarding one to 99 petroleum storage tanks or~~
~~\$1,990,000 for a responsible party regarding 100 or more petroleum storage tanks.]~~

(i) \$990,000 for a single release; and

(ii) for all releases by a responsible party in a fiscal year:

(A) \$990,000 for a responsible party owning less than 100 petroleum storage tanks;

and

(B) \$1,990,000 for a responsible party owning 100 or more petroleum storage tanks;

and

(h) bodily injury, property damage, or the cost of corrective action caused releases
reported on or after May 12, 2009, covered by the fund if the total amount previously paid by
the executive secretary to compensate third parties and fund corrective action plans for the
releases equals:

(i) \$1,990,000 for a single release; and

(ii) for all releases by a responsible party in a fiscal year:

(A) \$1,990,000 for a responsible party owning less than 100 petroleum storage tanks;

and

(B) \$3,990,000 for a responsible party owning 100 or more petroleum storage tanks.

Legislative Review Note
as of 2-27-09 5:40 PM

Office of Legislative Research and General Counsel

H.B. 368 - Underground Storage Tank Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill affect local governments covered by the Underground Storage Tank Trust Fund.
